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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASSIM ZOGHBI,

Petitioner,

v.

ALBERTO R. GONZALES*, Attorney
General,

Respondent.

No. 03-72562

Agency No. A94-212-867

ORDER

BEFORE: B. FLETCHER, RYMER and FISHER, Circuit Judges.

Respondent's petition for panel rehearing, filed September 30, 2005, is
GRANTED. The memorandum disposition, filed August 16, 2005, will be
amended concurrently with this order as follows.

At page 4 of the majority decision, the following two paragraphs shall be
deleted in their entirety:

Zoghbi's past persecution qualifies him for asylum status as a
refugee under 8 U.S.C. § 1101(a)(42). The IJ indicated in his oral
decision that there was "no discretionary reason" why he would not

* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as
Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

grant Zoghbi relief. We nonetheless remand for the BIA to exercise its discretion in granting asylum. *INS v. Ventura*, 537 U.S. 12 (2002).

Zoghbi's past persecution also gives rise to a presumption of future persecution, which supports withholding of removal. 8 C.F.R. § 208.13(b)(1)(i). If the BIA denies Zoghbi asylum relief on discretionary grounds, it should consider his withholding claim and provide the government an opportunity to present evidence to rebut the presumption of future persecution with possible changes in country conditions or relocation evidence. *Ventura*, 537 U.S. at 17.

At page 4 of the majority decision, the following paragraph shall be inserted to replace the two deleted paragraphs:

Zoghbi's past persecution creates a rebuttable presumption of a well-founded fear of future persecution, 8 C.F.R. § 208.13(b)(1), and therefore potentially qualifies him for a discretionary grant of asylum status under 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A), or withholding of removal under 8 C.F.R. § 208.16(b)(1)(i). Therefore, we remand to the BIA to determine whether Zoghbi qualifies for asylum and withholding of removal and, if appropriate, to exercise discretion on behalf of the Attorney General with regard to asylum. *INS v. Ventura*, 537 U.S. 12, 17 (2002). Our remand is without prejudice to the BIA considering evidence that there has been a fundamental change in circumstances such that Zoghbi no longer has a well-founded fear of persecution in Lebanon or that he could avoid persecution by moving to another part of Lebanon. *See* 8 C.F.R. §§ 208.13(b)(1)(i)(A)-(B), 208.16(b)(1)(i)(A)-(B).